



*Government Affairs Alert*

December 14, 2010

### **Texas Attorney General Releases Opinion on Pharmacy Network Services**

On December 10, 2010, the Texas Attorney General issued its anticipated opinion on the provision of pharmacy care after January 1, 2011. Though the Attorney General opinion offers answers to questions posed by the Texas Division of Workers' Compensation (TDWC), it provides limited clarity on the continued operation of pharmacy networks and pharmacy benefit managers after January 1, 2011.

In May, the TDWC asked the Attorney General for clarification of a perceived statutory conflict by answering two specific questions relating to the provision of pharmacy care after January 1, 2011. TDWC Commissioner, Rod Bordelon specifically asked:

- Question 1 – May insurance carriers contract with providers after January 1, 2011 to pay for prescriptions at rates lower than rates allowed under current guidelines?
- Question 2 – May insurance carriers contract with informal or voluntary networks to obtain such contracts?

In a brief response to the Commissioner's questions, the Attorney General made the following policy statements:

- There is no minimum allowable reimbursement rate set by statute, and fee schedules do not create a minimum allowable rate—only a maximum.
- Since voluntary and informal networks must become certified or dissolve by January 1, 2011, carriers cannot contract with these entities to provide care after January 1, 2011.
- Carriers **may** contract with a certified health care network (HCN) to obtain access to a contract with a health care provider to pay for prescription drugs at negotiated rates permitted by law.
- Contracting for care/services is separate from the actual provisioning of care/services.

All system stakeholders must pause and consider that without action or interpretation by the Texas Department of Insurance and/or the TDWC, the Attorney General opinion is nothing more than an opinion on questions of law. The TDWC's next steps will provide further direction and clarity for pharmacy stakeholders. This may include adoption of either version of the currently proposed emergency fee schedule(s). On their website, the TDWC states they are currently reviewing the opinion and anticipate issuing a statement as soon as possible, which PMSI expects will be within the next 48 hours.



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PMSI's Government Affairs Department recommends stakeholders review the Attorney General opinion with their internal legal counsel. Each stakeholder may have a different opinion on the intent, meaning and impact of this ruling. PMSI will continue to work with our contacts in the Attorney General's office and TDWC to determine the true intent of the Attorney General's statements and TDWC's next steps. At the same time, PMSI is working diligently to finalize operational steps on numerous options (dependent on TDWC actions) to prevent any interruption of pharmacy services and/or spikes in pharmacy costs after January 1, 2011. Our Account Management team will be educated on these options shortly, and will reach out to discuss them with their client contacts.

The Attorney General opinion can be viewed at [www.tdi.state.tx.us/wc/dwc/documents/ga0828.pdf](http://www.tdi.state.tx.us/wc/dwc/documents/ga0828.pdf).

For further information on this subject or other government-related items, contact Kevin Tribout, PMSI's Director of Government Affairs at [Kevin.Tribout@pmsionline.com](mailto:Kevin.Tribout@pmsionline.com) or 813.318.6876.

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